IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 181 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAMESHBHAI AMBALAL PATEL

Appearance:

1. Criminal Revision Application No. 181 of 2001

MS NV JOSHI, APP for Petitioner No. 1

RULE SERVED for Respondent No. 1-7

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/03/2003

ORAL JUDGEMENT

The present revision application under Section 397 read with Section 401 of the Code of Criminal

Procedure, 1973 (for short, "the Code") has been filed by the State of Gujarat, in order to challenge an order dated 02/11/2000 recorded by the learned Additional Sessions Judge, Kheda at Nadiad, in Special Case No. 96 of 1998, under which the learned Judge dismissed the aforesaid application, Ex.23 for sending the papers to the concerned Magistrate.

2. The case of the prosecution against the respondents above named may be briefly stated as follows;

> The respondents herein were chargesheeted before the said court for offences punishable under Section 147, 148, 149, 326 and 504 of IPC as well as for an offence punishable under Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It seems that as per the old practice prevailing at the relevant point of time, the chargesheet was directly submitted to the Court of Sessions, being a Special Court constituted under the said Act. Charge was framed and after framing of charge, the matter was placed for recording of evidence. At that stage, an application was submitted on 18/09/2000, at Ex.23 stating that under the said Act, the Sessions Court or the Special Court could not take cognizance of the offence directly on the strength of the chargesheet. Therefore, the matter was required to be sent back to the learned Magistrate for taking cognizance and for committing the case to the Court of Sessions.

3. The learned Judge heard the parties and dismissed the said application mainly on the ground of delay. The learned Judge observed that though the Hon'ble the Supreme Court pronounced a judgment in Gangula Ashok & Anr. Vs. State of A.P., reported in 2000 (1) (Crimes), 196 on 28/01/2000 and though the said judgment was published in Law Reports in February 2000, the application for referring the matter back to the Magisterial Court was submitted as late as on 18/09/2000 and therefore, in view of the aforesaid delay, the case could not be referred back to the Magisterial Court. Consequently, the above application was dismissed by the trial court.

4. Feeling aggrieved by the said judgment and order of the trial court, the State has preferred this Revision Application before this Court. It has been mainly contended here that simply because there was a delay, the

learned Judge could not have proceeded ahead with the trial of the said case and therefore, the said order of the trial court is illegal and perverse and deserve to be set aside. The applicant - State has, therefore, prayed that the present Revision Application be allowed, the application, Ex.23, filed before the trial court may also be allowed and the aforesaid order of the trial court may be set aside.

5. Rule was issued and in response to the service of notice of Rule, the respondents - original accused persons, have not found it proper to appear and contest the present revision application. It appears from the record of the trial court that the present respondents had no objection for referring the papers back to the Magisterial Court. This can be gathered from Para 3 of the order of the trial court at Page 6.

6. It is also noticed that there is some endorsement made by the learned advocate for the respondents, original accused, in the margin of the application that he had no objection for referring the papers to the Magisterial Court.

7. I have heard Ms.N V Joshi, learned APP for the State and have perused the papers. The facts are undisputed. The present respondents were chargesheeted for offences punishable under the IPC as well as under the said Act also. It is true that as per the past practice, the chargesheets were directly filed before the Court of Sessions, being a Special Court established under the said Act. However, the Hon'ble The Supreme Court had come across a case in which it was decided that the said Act never provided that the Special Court will be at liberty to take cognizance of an offence punishable under the said Act. Therefore, it was made clear in the said judgment that the appropriate course would be to file chargesheet before the Magisterial Court and then the Magisterial Court should commit the case to the Sessions Court, which is also a Special Court. (Ref. 2000 (1) Crimes, 196)

8. The Hon"ble the Supreme Court, however, made it clear that the cases already disposed of, would not be required to be disturbed, after the aforesaid judgment. Here, we find that the evidence was not recorded and the process of recording of evidence ought not to have been started. It is true that the charge was framed and the application was filed a little late. But, simply because there was a delay, it cannot be said that the trial court should have thrown away the said application and should

have proceeded ahead with the trial of the case. On the contrary, attention was drawn and even the learned APP and the learned advocate for the respondents, original accused, also agreed that the case was required to be sent back to the Magisterial Court.

9. On one hand, as per the aforesaid observation of the Supreme Court, the Sessions Court had no jurisdiction to take cognizance of the offence and on the other hand, attention of the learned Judge was specifically drawn to the said legal position, by referring to the aforesaid judgment of the Supreme Court which has been referred in his judgment by the learned Judge. Despite the said position, the learned trial Judge did not agree to refer it to the trial court. I am of the view that the said approach of the trial court is ex-facie illegal and contrary to the principle laid down by the Hon'ble the Supreme Court in the aforesaid judgment.

10. If an illegality has been caused or committed and if the illegality has not been noticed by a Court, then perhaps nothing could be done. But, when it has been brought to the notice of the Court and when a legal remedy was available, then the Court ought to have rectified the error, even at a later stage. Therefore, in not rectifying the error, the trial court has committed a serious illegality, which would go to the root of the case.

11. Therefore, in above view of the matter, the order passed by the trial court is ex-facie illegal and deserve to be set aside.

12. For the foregoing reasons, this revision application is allowed. The order passed by the trial court on 02/11/2000 below application, Ex.23 in Special Case No. 96 of 1998 is ordered to be set aside. The trial court is directed to send the chargesheet papers to the Court of the concerned Judicial Magistrate First Class in whose jurisdiction the offence is said to have been committed by the respondents. On receipt of the chargesheet papers, the said Court will do the needful, in accordance with the aforesaid judgment of the Hon'ble the Supreme Court. Rule is made absolute.

(D. P. Buch, J.)

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